

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

(1) BONNI J. GENZER,)	
)	
Plaintiff,)	
)	
v.)	Case No.: CIV-17-855-C
)	
(1) JAMES RIVER INSURANCE)	Blaine County District Court
COMPANY,)	Case No. CJ-2017-29
)	
Defendant.)	

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441(a), 28 U.S.C. § 1446, 28 U.S.C. § 1332(a), Federal Rule of Civil Procedure 81, and LCvR 81.2, Defendant James River Insurance Company (“James River”), by and through its attorneys of record, gives notice of removal from the District Court of Blaine County, State of Oklahoma, to the United States District Court for the Western District of Oklahoma. In support of this Notice of Removal, James River states as follows:

I. FACTUAL AND PROCEDURAL BACKGROUND

1. On July 14, 2017, Plaintiff Bonni J. Genzer initiated this action by filing a Petition in the District Court of Blaine County, State of Oklahoma, captioned, *Bonni J. Genzer, Plaintiff, vs. James River Insurance Company, Defendant*, Case No. CJ-2017-29 (the “Petition”), alleging a cause of action against Defendant. *See* Pet., *Bonni J. Genzer, Plaintiff, vs. James River Insurance Company, Defendant*, Jul. 14, 2017, Case No. CJ-17-29, Blaine Cnty., State of Okla., attached hereto as Ex. 1.

2. The Petition alleges that, on or about April 17, 2017, Plaintiff Bonni Genzer, an Uber driver, accepted a fare to transport a passenger from Oklahoma City to Woodward. On Plaintiff's return leg of the trip after dropping off her passenger, an oncoming semi allegedly ejected a metal object which went through Plaintiff's car windshield and impacted her face and head (the "Accident"). *See* Pet., Ex. 1 at ¶ 1.

3. Plaintiff alleges that she has been unable to identify or locate the driver of the semi. *See* Pet., Ex. 1 at ¶ 2.

4. Plaintiff alleges she is an insured under a policy of insurance by and between James River and Uber Technologies, Inc., which policy provides \$1,000,000.00 in uninsured motorist (UM) coverage for Uber "Rideshare Drivers" when they are providing rideshare transportation services. *See* Pet., Ex. 1 at ¶ 3.

5. Plaintiff alleges she submitted a UM claim to James River which James River has refused to pay. *See* Pet., Ex. 1 at ¶ 4.

6. Plaintiff alleges she has incurred and will continue to incur medical bills, has suffered and will continue to suffer pain, disability, cognitive loss, and disfigurement, and lost and will lose income as a result of the Accident. *See* Pet., Ex. 1 at ¶ 5.

7. Plaintiff prays for judgment against James River for the policy limit of \$1,000,000.00, plus costs and all other appropriate relief. *See* Pet., Ex. 1 at Prayer for Relief.

8. Plaintiff filed her Proof of Service evidencing John Doak, State Insurance Commissioner, was served with a copy of Plaintiff's Petition on July 18, 2017. *See* Return of Summons, attached hereto as Ex. 2.

II. AMOUNT IN CONTROVERSY & DIVERSITY OF CITIZENSHIP

9. Plaintiff makes no allegations of the citizenship of the parties in her state court Petition. *See* Pet., Ex. 1.

10. However, Plaintiff has submitted to James River the Accident Report which lists her home address as *** Chautauqua Ave., Norman, OK 73069. *See* Accident Report, attached hereto as Ex. 3.

11. Also, the subject Accident Report identifies Plaintiff as having an Oklahoma Driver's License. *See* Ex. 3.

12. Further, counsel for Plaintiff stated in an email to James River that Plaintiff "...lives in Norman, Oklahoma." *See* Email from Ryan Cunningham, Esq. to Michael Pitts, Claims Examiner for James River Insurance Company (May 9, 2017, 03:57 CST), attached hereto as Ex. 4.

13. Plaintiff is also employed in the State of Oklahoma. *See* Pet., Ex. 1 at ¶ 1.

14. Plaintiff is a citizen of the State of Oklahoma. *See* Ex. 1-4.

15. Defendant James River is a corporation duly organized and existing under the laws of the State of Ohio with its principal place of business in the State of Virginia. Defendant James River is therefore a citizen of the States of Ohio and Virginia. *See* Affidavit of Leanne Adams, attached hereto as Ex. 5.

16. Diversity of citizenship therefore exists between Plaintiff and Defendant James River.

17. Plaintiff's prayer for judgment is in excess of \$75,000.00. *See* Pet., Ex. 1 at Prayer for Relief.

18. Pursuant to 28 U.S.C. § 1332(a)(1), a federal district court can exercise jurisdiction over civil actions where the "matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs," and the action is between "citizens of different [s]tates." 28 U.S.C. § 1332(a)(1).

19. Here, the amount in controversy requirement is satisfied as Plaintiff's Petition prays for judgment against Defendant James River for the sum of \$1,000,000.00, an amount in excess of \$75,000.

III. THE NOTICE OF REMOVAL IS TIMELY FILED

20. Pursuant to 28 U.S.C. § 1446, a defendant "desiring to remove any civil action from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal . . . containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action." The notice "shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based"

21. John Doak, Insurance Commissioner for the State of Oklahoma, was served with Plaintiff's Petition on July 18, 2017. Plaintiff's return of service indicates that service was so completed on July 18, 2017. As such, the earliest possible deadline for

filing this Notice of Removal is August 17, 2017. This Notice of Removal is therefore timely filed.

22. Finally, this action was also timely filed pursuant to 28 U.S.C. § 1446(c)(1), as it was removed within “1 year after commencement of the action” on July 14, 2017.

IV. VENUE

23. This action was also properly removed to the Western District of Oklahoma in accordance with 28 U.S.C. § 1446(a), as the state court action was pending in the District Court in and for Blaine County, State of Oklahoma, which is located within the Western District of Oklahoma.

V. COMPLIANCE WITH LCvR 81.2 AND 28 U.S.C. § 1446(a)

24. In accordance with 28 U.S.C. § 1446(a), a copy of all Summonses, the Petition, and all other pleadings and orders served on the Defendant in this action are attached hereto as Exhibit 1, 6-7. Further, in accordance with LCvR 81.2, a copy of the docket sheet is attached hereto as Exhibit 8.

WHEREFORE, Defendant James River requests this Notice of Removal be accepted by this Court, and that this lawsuit proceed as an action properly removed to this Court’s jurisdiction.

Respectfully submitted,

s/Jason L. Glass

Jason L. Glass, OBA #17635
Tara D. Zickefoose, OBA #31757
BAUM GLASS & JAYNE
Mid-Continent Tower
401 S. Boston Ave, Suite 2300
Tulsa, Oklahoma 74103
Telephone: 918/938.7944
Facsimile: 918/938.7966
Email: jglass@bgj-law.com
tzickefoose@bgj-law.com

ATTORNEYS FOR DEFENDANT
JAMES RIVER INSURANCE COMPANY

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of August, 2017, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing, and mailed first class, U.S. mail, proper postage prepaid thereon to the following:

Rex Travis, Esq.
Paul Kouri, Esq.
Greg Milstead, Esq.
Travis Law Firm
P.O. Box 1336
Oklahoma City, OK 73101

s/Jason L. Glass

Jason L. Glass